

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ANNETTE J. ROSE,

Plaintiff,

v.

SOCIAL SECURITY COMMISSIONER,

Defendant.

Case No. 2:17-cv-12747

HON. STEPHEN J. MURPHY, III

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**ORDER ADOPTING
REPORT AND RECOMMENDATION [14],
GRANTING PLAINTIFF'S MOTION FOR SUMMARY
JUDGMENT [9], DENYING DEFENDANT'S MOTION FOR SUMMARY
JUDGMENT [12], AND REMANDING THE MATTER TO THE COMMISSIONER**

In a decision issued by an Administrative Law Judge ("ALJ"), the Commissioner of the Social Security Administration ("SSA") denied Plaintiff Annette Rose's application for Supplemental Security Income and Disability Insurance Benefits. The SSA Appeals Council declined to review the ruling, and Plaintiff appealed. The Court referred the matter to the magistrate judge, and the parties filed cross-motions for summary judgment. ECF 9, 12. The magistrate judge issued a Report and Recommendation ("Report") suggesting the Court grant Plaintiff's motion, deny Defendant's motion, and remand the matter to the Commissioner of Social Security and ALJ under Sentence Four of 42 U.S.C. § 405(g) for further consideration. ECF 14.

The Report recommended remand due to the ALJ's undisputed failure to expressly acknowledge and consider a disability letter by the Veteran's Administration, which contained a disability determination. *Id.* at 1360 (citing *Ritchie v. Comm'r of Soc. Sec.*, 540 F. App'x 508, 510 (6th Cir. 2013) and SSR 06-03p, 2006 WL 2329939 (Aug. 9, 2006)); *id.*

at 1365. The Report recommended a "sentence-four remand" under 42 U.S.C. § 405(g). *Id.* at 1368–69 (quoting *Faucher v. Sec'y of Health & Human Servs.*, 17 F.3d 171, 174 (6th Cir. 1994)). Under the fourth sentence of 42 U.S.C. § 405(g), the Court may remand the cause while entering a judgment affirming, denying, or reversing the decision of the Commissioner of Social Security.

The Report recommended that, upon remand, the ALJ should consider the Veteran's Administration letter, the third-party function report prepared by Plaintiff's son, Christopher Stewart, and the opinion and treatment notes of Plaintiff's treating physician, Dr. Kirk P. Swabash, D.O. ECF 14, PgID 1369–70.

Civil Rule 72(b) governs review of a magistrate judge's report and recommendation. De novo review of the magistrate judge's findings is required only if the parties "serve and file specific written objections to the proposed findings and recommendations." Fed. R. Civ. P. 72(b)(2). Because neither party filed timely objections, de novo review of the Report's conclusions is not required. Having examined the record, the Court finds that the magistrate judge's conclusions are factually based and legally sound.

WHEREFORE, it is hereby **ORDERED** that the magistrate judge's Report and Recommendation [14] is **ADOPTED**.

IT IS FURTHER ORDERED that the Plaintiff's Motion for Summary Judgment [9] is **GRANTED**.

IT IS FURTHER ORDERED that Commissioner's Motion for Summary Judgment [12] is **DENIED**.

IT IS FURTHER ORDERED that the case is **REMANDED** to the Commissioner of Social Security for further consideration consistent with the Report.

SO ORDERED.

s/ Stephen J. Murphy, III
STEPHEN J. MURPHY, III
United States District Judge

Dated: September 13, 2018

I hereby certify that a copy of the foregoing document was served upon the parties and/or counsel of record on September 13, 2018, by electronic and/or ordinary mail.

s/ David Parker
Case Manager